

MINUTES
MALIBU CITY COUNCIL
REGULAR MEETING
SEPTEMBER 22, 2003
COUNCIL CHAMBERS
6:30 P.M.

CALL TO ORDER

Mayor Kearsley called the meeting to order at 6:37 p.m.

ROLL CALL

The following persons were recorded in attendance by the Recording Secretary:

PRESENT: Mayor Ken Kearsley, Mayor Pro Tem Sharon Barovsky, Councilmembers Joan House, Jeffrey Jennings and Andrew Stern.

ALSO PRESENT: Katie Lichtig, City Manager; Christi Hogin, City Attorney; Mike Toruya, Planning Manager; Scott Albright, Senior Planner; Claudio Sanchez, Acting City Engineer; Barbara Cameron, Contract Grant Writer; Paul Adams, Parks & Recreation Director; and Lisa Pope, City Clerk

FLAG SALUTE

Senior Planner Albright led the Pledge of Allegiance.

CLOSED SESSION REPORT

Public Comment on Closed Session Items

None.

City Attorney Hogin reported that the Council met in closed session at 5:35 p.m. to discuss the following items:

Existing litigation per Government Code Section 54956.9 (a):

1. Chicksands Properties LTD. v. City of Malibu et al.
Los Angeles County Superior Court Case No. BS072081
2. City of Arcadia, et al. v. Regional Water Quality Board, et al.
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791

3. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)
Los Angeles County Superior Court Case No. BC230410
4. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)
Los Angeles County Superior Court Case No. SS011355
5. City of Malibu v. California Coastal Commission (AB988 / LCP)
Los Angeles County Superior Court Case No. SC074641
Related cases (City named as a party in interest):
 - a. Rick Appel v. California Coastal Commission
Case No. SC074658
 - b. Ralph Herzig v. California Coastal Commission
Case No. SS011382
 - c. Land Use Preservation v. California Coastal Commission
Case No. SS011388
 - d. Riverview Farm Associates v. California Coastal Commission
Case No. SS011383
 - e. Brian Sweeney v. California Coastal Commission
Case No. SS011387
 - f. Trancas-PCH v. California Coastal Commission
Case No. SC074640
 - g. Tuna Ridge v. California Coastal Commission
Case No. SC011381
 - h. Land Use Preservation Defense Fund v. California Coastal Commission
Los Angeles County Superior Court Case No. SS011388
6. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)
Ventura County Superior Court Case No. CIV 216938
7. City of Malibu / Geffen v. Access for All / Coastal Commission et al
Los Angeles County Superior Court Case No. BC277034
8. Colony Beach Preservation Association v. California Coastal Commission
Los Angeles County Superior Court Case No. BS083683
9. Malibu CAN v. City of Malibu (MBC Development Agreement)
Los Angeles County Superior Court Case No. BS083683
10. Malibu Township Council v. City of Malibu II (28-car garage)
Los Angeles County Superior Court Case No. BS079965
11. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Sacramento Superior Court) (Amicus)
12. Rubens v. City of Malibu
Los Angeles County Superior Court Case No. SC060331
13. Sierra Club v. City of Malibu (Forge Lodge)
Los Angeles County Superior Court Case No. BS083573
14. Silver v. City of Malibu
Los Angeles County Superior Court Case No. BS081960
15. Sprint v. City of Malibu et al
United States District Court Case No. SACV02660 DOC (MLGx)

16. Sweeney et al v. City of Malibu
Los Angeles County Superior Court Case No. SS011602
17. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu
Los Angeles County Superior Court Case No. BS0735585
18. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu
Los Angeles County Superior Court Case No. BS072794
19. Trancas Property Owners Association v. City of Malibu
Los Angeles County Superior Court Case No. BS084112
20. United States of America ex rel. Darian v. Accent Builders inc. et al.
United States District Court Case No. CV00-10255-FMC(JWJx)
21. Visher v. City of Malibu
Los Angeles County Superior Court Case No. SC078703

Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):

22. Number of Cases: 2

City Attorney Hogin indicated that the Council discussed some, but not all items listed on the Closed Session Agenda due to limited time and took no reportable action.

APPROVAL OF AGENDA

MOTION Councilmember Stern moved and Councilmember House seconded a motion to approve the agenda with Item 4.C. continued to October 27, 2003. The motion carried unanimously.

REPORT ON POSTING OF AGENDA

City Clerk Pope reported that the agenda for the meeting was properly posted on September 12th, 2003, with the Amended Agenda posted on September 19th, 2003.

ITEM 1 CEREMONIAL/PRESENTATIONS

- A. Presentation of City Tile to Tom Fakehany for his service to the City of Malibu

Mayor Kearsley presented a City Tile to Tom Fakehany for his service to the City of Malibu. Mr. Fakehany thanked the City Council and citizens of Malibu for the award.

- B. Proclamation Declaring October as Fire Prevention Month

Mayor Kearsley presented a proclamation to Fire Chief Lee declaring October as Fire Prevention month. Chief Lee encouraged residents to

look out for fires and to maintain smoke detectors and prepare a fire escape plan.

C. Presentation of Certificates of Recognition to Summer 2003 Junior Water Polo Team for their Undefeated Season

Mayor Kearsley presented certificates of recognition to the Summer 2003 Junior Waterpolo Team for their undefeated season. Randy Steigley commended the players and distributed the certificates.

D. Recognition of the City of Malibu Administrative Services Department on being awarded the Certificate of Achievement for Excellence in Financial Reporting for the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2002

Mayor Kearsley recognized Administrative Services Director James on being awarded the Certificate of Achievement for Excellence in Financial Reporting for the City's Comprehensive Annual Financial Report for Fiscal year ending June 30, 2002.

APPROVAL OF AGENDA (continued)

City Attorney Hogin requested the Council continue Item No. 4.A. to October 27, 2003.

By acclamation, the Council continued Item No. 4.A. to October 27, 2003.

ITEM 2A PUBLIC COMMENTS

Nidra Winger Maus, Acting Director of the Malibu Community Center, announced that as of September 30, 2003 she would no longer be Acting Director of the Community Center. She expressed gratitude to the City for assisting in keeping Cameron Park open. She stated the Point Dume Community Services District would not be dissolving.

Bev Hammond thanked staff and Council for cooperating with the Point Dume Community Services District (PDCSD), particularly on park access issues. She discussed the possibility of a joint powers agreement between PDCSD and the City to run a community center if the Malibu Bay Company Development Agreement (MBC DA) passes.

Sam Birenbaum stated his son had never been acknowledged by the City of Malibu for his military service. He discussed his recent eviction.

Byron Walls deferred his time to Sam Birenbaum.

Daniel Donatelo deferred his time to Sam Birenbaum.

Jean Goldsmith deferred her time to Sam Birenbaum.

Phyllis Keifer deferred her time to Sam Birenbaum.

Mr. Birenbaum asked the City Council to honor the legal system and allow his appeal to proceed. He stated their home posed no threat to public health and safety.

Marty Ryan deferred his time to Sam Birenbaum.

Penelope Sudrow deferred her time to Sam Birenbaum.

Mr. Birenbaum requested the Council reconsider the private law firm that ignored the evidence in the case. He stated “innocent people had been convicted.”

Pamela M. Bermudez addressed the Council in support of the Birenbaums. She expressed surprise that none of the Councilmembers had responded to her email regarding the Birenbaums’ situation. She requested the City allow the appellate process to proceed.

Carole Lieberman discussed the emotional distress to the Birenbaums caused by the eviction from their home.

Lolly Ossman addressed the Council in support of the Birenbaums. She asked the Council to contemplate the feeling of homelessness due to eviction.

Nidia Birenbaum discussed her involvement in the City including filming and cable television. She discussed her recent eviction from her home. She requested the Council allow them to return to their home until the appeal is heard.

Bruce Bermudez addressed the Council regarding the eviction of the Birenbaums.

Swan Parsons spoke on behalf of the Birenbaums.

ITEM 2B COUNCIL COMMENTS

Councilmember House reported on the recent meeting of the Administration and Finance Subcommittee at which they discussed the City of Malibu Affinity Card, the 2020 Vision Team and other issues that would come to the Council at future

meetings. She discussed a recent meeting with Councilmember Jennings, herself and Coastal Commission representatives Scott Peters and Pat Kruer. She stated she and Mayor Kearsley attended the Parks and Recreation Commission meeting. She stated she attended the Malibu Appreciation of Service event.

Mayor Pro Tem Barovsky stated she had not responded to emails regarding the Birenbaum case due to pending litigation.

City Attorney Hogin explained the litigation involving the Birenbaums was a criminal prosecution brought in the name of the people of the State of California, and the City Council has no authority in those cases. She discussed the City's contract with Dapeer, Rosenblit and Litvak for prosecution services. She stated the Council had no authority to amend the Court order.

Councilmember Jennings stated that the Birenbaums were fortunate to have Josh Birenbaum as a son and to have friends who support them. He explained the Council's duty to make general policies and that it was not the Council's job to determine against whom those laws were applied. He discussed the City's Code Enforcement process.

Councilmember House stated she was personally sorry that the Birenbaums were in the position they were in. She stated the Council had no role in the matter.

In response to Mayor Pro Tem Barovsky, Parks and Recreation Director Adams discussed the Joint Use Agreement between the City and the Community Services District. He stated the City would have to determine the impact of the District no longer having staffing at the site. Mayor Pro Tem Barovsky asked whether the park would be open as much as it had been in the past. City Manager Lichtig stated the same presence on the school grounds would not be available, but staff was trying to maintain the park hours of operation. She stated the amount of service would not be matched.

Parks and Recreation Director Adams stated it was his understanding that the School District would issue permits for use of the Point Dume Auditorium. Mayor Pro Tem Barovsky expressed dissatisfaction with the School District permitting the auditorium.

Ms. Hammond stated it was her understanding that the Joint Use Agreement expired on September 20, 2003.

Mayor Pro Tem Barovsky asked if non-profits could use the facility at no charge. Parks and Recreation Director Adams stated the City policies would continue on the facilities utilized under the Joint Use Agreement. He indicated that if it is the

Council's desire for staff to continue operating the auditorium on the weekends, he could present a cost to Council.

Mayor Pro Tem Barovsky asked if the City could subcontract with the Point Dume Community Services District for facility operation. City Manager Lichtig stated staff would look at it if it was the will of the Council. She indicated that they were working to fill the void created by the change in Point Dume Community Services District staffing.

Mayor Pro Tem Barovsky asked if staff would be available. Ms. Hammond explained that without a facility to generate income, budgetary funds were not available for a facility manager.

Councilmember House requested that a list of programs currently offered be included in the report to Council on the Community Center issue. She indicated the need to notify other agencies and to see if they have a plan as well with regard to the Point Dume Community Services District item on October 13, 2003.

Councilmember Stern discussed community events at Cameron Park. He congratulated Ms. Winger Maus on a job well done. He commended staff on the BBQ and Administrative Services Director James on her award. He requested consensus for staff to write a letter to Cal-Trans and Assemblymember Pavley expressing concerns regarding storm drain cleaning before the rains.

Mayor Kearsley thanked Ms. Winger for her service.

Councilmember House congratulated Administrative Services Director James, the water polo team and Tom Fakehany. She pleaded with residents to brush clear.

ITEM 3 CONSENT CALENDAR

Councilmember Jennings asked the situation on the claim under Consent Calendar Item No. 3.B.4.. City Attorney Hogin stated it was the City's understanding that the pipe failure was on private property damaging Mr. Begley's property.

MOTION: Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to approve the Consent Calendar. The motion carried unanimously.

The Consent Calendar consisted of the following items:

- A. Previously Discussed Items
 - 1. Second Reading and Adoption of Ordinance No. 255 and 256

Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 255, adopting Zoning Map Amendment 02-001 amending the Zoning Map from Multi-family Residential (MF) to Commercial Visitor Serving (CV-1) on a 1.1 acre property known as Assessor Parcel Numbers 4452-004-038, 040 and 042, located at 22706 Pacific Coast Highway (Weintraub Financial) and adopt Ordinance No. 256, approving a development agreement between the City of Malibu and Weintraub Financial Services, Inc.

B. New Items

1. Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

2. Approve Warrants

Staff recommendation: Allow and approve warrant demand numbers 22950 through 23067 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 294 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$690,970.78, including ADP payroll voucher numbers 5433889 – 5433907 in the amount of \$107,650.19.

3. Approval of Minutes

Staff recommendation: Approve City Council meeting minutes for the Regular City Council meeting held on July 28, 2003 and the Special City Council meeting held on September 3, 2003.

4. Denial of Claim for Damages filed by Edward Begley

Staff recommendation: Deny claim filed by Edward Begley.

5. Designation of Anthony Fredrick Memorial Scholarship Fund for Parks & Recreation Youth Sports Programs

Staff recommendation: Approve the designation of the Parks & Recreation Department's scholarship fund as the "Anthony Fredrick Memorial Scholarship Fund."

6. Acceptance of Donations for the Malibu Senior Center

Staff recommendation: Authorize Staff to seek and accept appropriate donations to the Malibu Senior Center of materials, services or money.

7. Grant Application to the California Department of Parks and Recreation Non-Motorized Recreational Trails Program for Las Flores Creek Park Trails

Staff recommendation: Adopt Resolution No. 03-53 approving the application for grant funding from the California Department of Parks and Recreation Non-Motorized Recreational Trails Program

for construction of trails, benches and interpretive signs in Las Flores Creek Park.

8. Approval of Job Specifications for Public Works Director / City Engineer and Deputy City Engineer

Staff recommendation: Approve the job specifications for two positions (Public Works Director/City Engineer and Deputy City Engineer) and adopt Resolution No. 03-55, establishing employment classifications, the number of authorized positions in each classification, the compensation for these classifications and amending Section 4 of Resolution No. 03-21.

9. Approval of Minutes

Staff recommendation: Approve City Council meeting minutes for the Quarterly City Council meeting held on July 30, 2003.

ITEM 4 ORDINANCES AND PUBLIC HEARINGS

A. GENERAL PLAN AMENDMENT NO. 02-002; ZONING MAP AMENDMENT NO. 02-002; NEGATIVE DECLARATION NO. 02-003 An Amendment to the Malibu General Plan Land Use Map from Rural Residential - 20 to Rural Residential - 5, and an Amendment to the Malibu Zoning Map from Rural Residential - 20 to Rural Residential - 5, on 68 Acres and Open Space Dedication of 57 Acres along the North side of Latigo Canyon Road, approximately 4,000 feet North of the Latigo Canyon/Pacific Coast Highway Intersection. APPLICANT: City of Malibu; OWNER: George J. Rubens; SETTLEMENT: George J. Rubens, as trustee of the George J. Rubens and Yvonne M. Rubens Family Trust, et al, and the City of Malibu; LOCATION: North side of Latigo Canyon Road, approximately 4,000 feet North of the Pacific Coast Highway/Latigo Canyon Road intersection; GROSS ACREAGE: 68 acres (Continued from September 11, 2003).

Staff recommendation: (1) Adopt Resolution No. 03-25 adopting Negative Declaration No. 02-003 for General Plan Amendment 02-002 to change the General Plan Land Use Map from Rural Residential 20 to Rural Residential 5 and Zoning Map Amendment No. 02-002 to change the Zoning Map from RR-20 to RR-5 on 68 acres of land known as Assessor Parcel Numbers 4459-003-007 and 008, generally located on the north side of Latigo Canyon Road, approximately 4,000 feet from the Latigo Canyon Road / Pacific Coast Highway intersection (Rubens Family Trust); (2) adopt Resolution No. 03-26, a resolution of the City Council of the City of Malibu approving General Plan Amendment 02-002 to change the General Plan Land Use Map from Rural Residential 20 to Rural Residential 5 on 68 acres of land known as Assessor Parcel Numbers 4459-003-007 and 008, generally located on the north side of Latigo Canyon Road, approximately 4,000 feet from the Latigo Canyon Road /

Pacific Coast Highway intersection (Rubens Family Trust), and (3) after the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 241, an ordinance of the City of Malibu adopting Zoning Map Amendment No. 02-002 to change the Zoning Map from RR-20 (one unit per twenty acres) to RR-5 (one unit per five acres) on 68 acres of land known as Assessor Parcel Numbers 4459-003-007 and 008, generally located on the north side of Latigo Canyon Road, approximately 4,000 feet from the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust); and (4) direct Staff to schedule second reading and adoption of Ordinance No. 241 for the October 13, 2003 City Council meeting.

ACCLAMATION By acclamation, Item 4.A. was continued to October 27.

B. Addition to Malibu Municipal Code Chapter 12.08, Parks, Beaches and other Recreation Areas Prohibiting Lookouts for Illegal Activities

Staff recommendation: 1) After City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 259, an ordinance of the City of Malibu adding Section 12.08.075 to the Municipal Code to prohibit individuals from signaling the approach of police to those participating in prohibited activities; and 2) Direct Staff to schedule second reading and adoption of Ordinance No. 259 on October 13, 2003.

Parks and Recreation Director Adams presented the staff report.

Councilmember Jennings stated he had reservations with the ordinance. He questioned what benefit the ordinance would provide. Lt. Gressman explained situations under which lookouts were caught. Councilmember Jennings stated he was concerned about the ordinance violating First Amendment rights.

Councilmember House discussed the previous method of plain clothes officers patrolling the beach to advise of illegal activities. She requested Lt. Gressman describe incidents experienced in the past. Lt. Gressman explained that civilians would inform other civilians that police were coming.

City Attorney Hogin asked if the use of the undercover office precluded the need for the lookout ordinance. Lt. Gressman stated that it helped. She indicated that that practice was usually used on weekends and with reserve officers.

Councilmember House requested information on the number and effectiveness of undercover Sheriff's Department lookouts. Lt. Gressman stated it would be an added tool for prosecution.

Mayor Pro Tem Barovsky expressed the same concerns as Councilmember Jennings.

Lt. Gressman stated the purpose was to get the alcohol off the beach.

Mayor Pro Tem Barovsky indicated it was a tough call between a person's civil rights and proper enforcement.

Mayor Kearsley discussed the impingement on the rights of people to say "The cops are here."

No action was taken due to lack of a motion.

- C. Appeal No. 03-001 – An appeal of Planning Commission's conditions of approval, specifically limiting the Malibu Stage Company to 18 production days for children performances, 60 production days for non-children performances, and 2 days for fund raising activities. Appellant: Geoff Ortiz, Executive Director, Malibu Stage Company; Applicant: Malibu Stage Company; Location: 29243 Pacific Coast Highway
Staff recommendation: Continue to the October 27, 2003 City Council meeting.

MOTION: Councilmember Stern moved and Councilmember Jennings seconded a motion to continue the item to October 27, 2003. The motion carried unanimously.

5. OLD BUSINESS

- A. Receive Report from Bond Measure Advisory Committee on Results of Survey
Staff recommendation: Receive and file the Parks and Recreation Benefit Assessment District and Sales Tax Increase Feasibility Report and consider recommendation from the Bond Measure Advisory Committee.

MOTION Councilmember Jennings moved and Councilmember Stern seconded a motion to receive and file the Parks and Recreation Benefit Assessment District and Sales Tax Increase Feasibility Report and consider recommendation from the Bond Measure Advisory Committee. The motion carried unanimously.

6. NEW BUSINESS

A. Formation of a Blue Ribbon Committee to Provide Recommendations on Alternative Solutions to the Civic Center Way / Winter Canyon Traffic Safety Issues

Staff recommendation: 1) Approve the formation of a Blue Ribbon Committee to investigate and recommend alternative solutions to the Civic Center Way / Winter Canyon traffic safety issues; 2) appoint a 5 member committee consisting of one appointee from each Councilmember; 3) direct the committee to hold at least two public hearings to solicit public input on potential projects; and 4) direct the committee to return with recommendations by a specific date.

Acting City Engineer Sanchez presented the staff report.

Ryan Embree suggested the Council establish parameters for the committee's deliberations. He indicated that he did not believe five members was adequate for the committee. He expressed his desire that the Council extend the time limit for the committee application period and advertise more. He expressed his belief that the committee's recommendation should come before the public safety commission.

Councilmember Jennings stated that no options should be foreclosed. He suggested the Blue Ribbon Committee work together with the Public Safety Commission, with the Commission playing the lead role. He agreed with Mr. Embree that the committee should have more than 5 members. He felt that the committee should be at least 10 members, 2 appointees per Councilmember.

Mayor Pro Tem Barovsky agreed that the Public Safety Commission should be involved. She suggested joint Public Works Commission / Public Safety Commission / Blue Ribbon Committee meetings. She expressed support for a 10 member committee.

Councilmember Stern stated he did not want the Commissions to have more authority or power than the Blue Ribbon Committee.

In response to Mayor Pro Tem Barovsky, City Manager Lichtig advised that 20 people could be manageable provided a longer time frame, as long as the Council was prepared to give staff time to get the necessary consensus.

Mayor Kearsley suggested a joint Public Safety Commission / Blue Ribbon Committee, but not including the Public Works Commission

because there was no project yet. He indicated support for a 10 member committee.

Councilmember House indicated support for appointment of 2 committee members per Councilmember due to new volunteers coming forward. She indicated that the projects should go to the Public Safety Commission at first. She requested a sunrise/sunset on the project.

Mayor Pro Tem Barovsky withdrew her suggestion of Public Works Commission participating at this point due to the lack of a current project. She indicated support for a sunset clause for the Committee.

Councilmember Jennings stated he did not think there was a time pressure for the committee to come up with consensus.

Councilmember Stern stated he would hate to see it get bogged down or delayed. He indicated that a sunset provision keeps a fire on and keeps it going.

Councilmember Jennings stated a sunset provision was a good idea, but he was willing to grant an extended period of time before it was imposed.

City Clerk Pope indicated that the notice could be published on October 2, with applications due by the October 15th and with appointments being made on October 27, 2003.

MOTION Councilmember House moved and Mayor Pro Tem Barovsky seconded a motion to establish a Civic Center Way Blue Ribbon Committee made up of two appointees per Councilmember, to work with the Public Safety Commission to analyze traffic and public safety conditions on Winter Canyon and Civic Center Way between Stuart Ranch Road and Las Virgenes, provide recommendations and alternative solutions to traffic safety issues and to direct staff to bring back an item on the October 27, 2003 City Council agenda to appoint members to the Blue Ribbon Committee. The motion carried unanimously.

ITEM 7. COUNCIL ITEMS

None.

ADJOURN At 8:30 p.m. Mayor Pro Tem Barovsky moved and Councilmember House seconded a motion to adjourn. The motion carried unanimously.

Approved and adopted by the City Council of

the City of Malibu on October 27, 2003.

KENNETH KEARSLEY, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)